

Notes from the Caltrans Statewide PA Teleconference 2/26/04

Intro

Greg King thanked everyone for the input on the last teleconference and their continuing perseverance with the PA. Notes from the January meeting are now posted on Cultural's Intranet webpage. We'll continue to email the notes to the HRCs as well.

Other participants at Headquarters (HQ) were: Dorene Clement, Germaine Belanger (Local Assistance), Dana Supernowicz, Jill Hupp, Tina Biorn, Gina Moran, Dale Jones and (by phone) Glenn Gmoser.

Dorene commented on the quality of PA consistency review documents HQ has received, which has been high overall. There are four districts from which we haven't had any documents, but HQ understands there are reasons for that. We are still averaging a 1-3 day turnaround for reviews.

Glenn noted that one thing the submittals tend to lack is a comprehensive ESA action plan. It is not enough to simply state in the HPSR that an ESA will be used. A separate chapter or section discussing how Attachment 5 of the PA was applied might be needed. Also, peer review is critical, including review of local assistance documents.

Questions and Answers

- Q.** Could you confirm that the Interim Policy for Post-1957 Buildings has expired? Can we still use it on state-only projects to avoid having to evaluate more recent resources?
- A. Jill:** Yes, it is expired. We now use Attachment 4 of the PA. No, the Interim Policy can't be used for state-only projects, but you can use the guidance in Attachment 4.
- Q.** Can we use the PA for state-only projects?
- A. Jill:** We can't use the PA itself for non-federal projects, but we can use the attachments to the PA. They were developed as Caltrans guidance.
- Q.** The 30-day review period at SHPO is calendar days, not business days, right? What happens when the 30 days are up—can we proceed, or do we have to wait for a letter?
- A. Dana:** Yes, it is calendar days. SHPO has issued direction to the 106 review staff that they will stick to a 30-day time frame for commenting on eligibility determinations, as stated in PA Stip VIII.C.5. If SHPO intends to comment and find they can't do so within the 30-day period, SHPO staff will contact Caltrans to request an extension of time. If 30 days *passes* without either a letter from SHPO or contact asking to extend the time, then SHPO will not be commenting, and according to the PA we can move on to the next step of the PA.

Also, to clarify: the 30-day clock starts on the date SHPO logs in the document. We can't guess or assume they got it on a particular date – the PA says “confirmation of the date of receipt as basis for determining the 30 day review period may be provided through the SHPO database, a mail delivery receipt, or written or documented oral

communication from the SHPO.” Your 106 Coordinator can provide the SHPO database login information. You could also send the submittal through certified mail, like FHWA does. Hans Kreutzberg has made it very clear that he does not want to be getting a high volume of calls from Caltrans - including the 106 Coordinators - to ask if SHPO will be commenting on a project. He said that rather, the SHPO staff would either contact us or we can assume they are not commenting. If you really need a letter for other compliance purposes, your 106 Coordinator can ask about it, but SHPO doesn’t want us doing this on a routine basis.

Q. That’s fine for 106, but don’t we need a letter for NEPA compliance? Our engineers won’t move a project forward without a letter. Doesn’t FHWA require a letter too?

A. Jill: NEPA requires compliance with Section 106, not necessarily a letter.

Glenn: FHWA apparently has mixed views about this, so we’ll need to talk to them. We should be able to use some other form of confirmation – such as the SHPO log in database printout or the certified mail receipt.

Greg: We plan to discuss this with our management and FHWA’s management. We’ll make a note of it as an action item for the next teleconference.

Q. What is the status of the PA tracking system that HQ was supposedly developing? Can you tell me anything about it, where we are, what’s in it, when we’ll get it?

A. Gina: Yes, it is moving forward, but because of a technical glitch having to do with a licensing issue, we are behind schedule. We are hoping to roll it out about April 15th. It will be a user-friendly access database accessible on the Intranet, and will replace the workload list. This is the first phase for data entry only. You will not be able to print out reports from the Intranet. I will be able to generate them and send. The next phase will be to develop a query/report page on the Intranet. Once we get the data entry phase completed, we will work on the query/report section. We’ll be coming around to the districts to do a demo once it’s ready to go.

Q. Central Region has been using its own database with a separate page for PA tracking. Will we have to re-enter all our data?

A. Gina: We can probably pull the data, so you would not have to re-enter it.

Q. I know the PA doesn’t apply to projects on tribal land. But what about projects that are only partly on tribal land; does the PA apply to those parts of the project that are not on tribal land?

A. Tina: No. As with state-only projects, though, we can use the attachments to the PA. You’d use the attachments as guidance, but would process the report under 36 CFR part 800. Note that we can’t use the PA even if the tribe says that it’s okay to do so.

Q. How do we cite the attachments, if we’re not using the PA?

A. Dorene: We would cite the Caltrans Environmental Handbook, Volume II.

Q. Regarding documentation for exempted properties, should I be keeping a record of how many properties I have exempted, for inclusion in the annual report, as well as a

list of building addresses, so that future researchers will be able to tell what was exempted?

A. Dorene: No, this information doesn't go in the annual report. We only need to state that Attachment 4 was used on a project; that it was done by a qualified professional; and an estimated time saved (compared to without PA, assuming we had no shortcut MOU, etc.). HQ is working on a matrix/guide to help make these estimates. But there is no place in the annual report for numbers of buildings exempted. It isn't needed for future researchers either, since we have to resurvey for environmental re-evaluations older than five years anyway.

Q. We do a lot of resurveys for projects that are 1-2 years old, so we are keeping lists of what we've exempted in the project files. That's OK isn't it?

A. Greg: The PA does not require us to keep lists of exempted properties. SHPO and the Advisory Council agreed with this approach. Staff who meet the professional qualifications are authorized to make the calls. Gary Winters recently went to bat for the cultural resources classifications, asking them to be removed from the surplus list because of their critical role in project delivery. He was none too pleased to hear that some districts are now requiring more of consultants for state and/or local projects than needed under the PA. All this having been said, there's nothing to prohibit staff from taking informal notes on *areas* of exempt properties and keeping them in the project file if they feel it's really necessary. For instance, noting that there were some Victorian houses near the north end of the study limits is probably a good idea.

Glenn: With respect to exempting buildings say from the 1960s, compare it to an archaeological survey – you wouldn't record every rock and document that it *wasn't* an artifact.

Q. What if there's a building that's a year away from being formally evaluated (i.e., 49 years old)?

A. Dorene: If it's that close, it's better to just evaluate it now.

Q. I have been sent a quantitative list of properties in the APE of a local project that the consultant says are exempt from survey under Attachment 4 of the PA. The consultant is reputable, professionally qualified architectural historian with whom I have previously worked. He said seven buildings fall under Property Type 2 (buildings less than thirty years old) and four buildings fall under Property Type 6 (substantially altered buildings that appear to be more than 30 years). I know that as the Caltrans PQS (PAH), I officially make the exemption determination, so do I need to have photos, addresses, Assessor's Parcel Numbers, etc., of the thirteen buildings to confirm that they meet the criteria for Attachment 4? Or can I rely on the fact that I trust the consultant to adequately assess whether the buildings qualify as exempt? In that case, would I just need to know how many they exempted for my documentation to the files and the annual reporting?

A. Dorene: A consultant who qualifies to exempt properties under Attachment 4 is the one who officially determines them to be exempt. You as PQS must review and sign off on the work, but all you are actually approving is that the person doing the work is qualified to do so. Yes, you can trust this reputable, professionally qualified

consultant. And no, you don't need a precise count of exempt properties for files or annual report; just ask the consultant how much time they estimate was saved over normal survey. Consultants can probably do better estimates than we can; for instance - what time would they charge on a survey of the area for another agency that didn't have PA?

Glenn: We can ask them to explain their methodology, but not for lists of all the properties they exempted.

- Q.** The PA Attachment 4 allows consultants (archaeologists and architectural historians) to exempt certain properties from review. But what if I think based on past experience, that a particular consultant isn't trustworthy enough to make these calls? Can I ask them to provide verification of the dates of construction, or submit photos, etc.?
- A. Dorene:** If you think the consultant is not trustworthy enough to make the call, why would you trust the documentation they would provide on those properties? They can use phony data, fudge facts, take deceptive photos, etc. Their documentation would be no better than their word if they are dishonest. If they are just incompetent, their documentation probably won't be adequate either. It would be better to take a look at the project area yourself or ask someone else to do so; run the photolog, look at maps, or whatever will give you the information. Better to check yourself or by someone you trust than to ask for more questionable documentation.
- Q.** But what about the fact that we don't have the resources to be following up this way?
- A. Greg:** If that's the case, then we probably don't have the resources to do more work than the PA requires in keeping lists of exempted properties either. Hans Kreutzberg stated at the quarterly meeting last December that he wants to see "uniformity and consistency among the districts" in interpreting the PA. The PA is about streamlining and focusing on important resources. If we require consultants/local agencies to submit concrete evidence that these are exempt resources, we are losing some of the efficiencies all the agencies agreed to. If there are problems with this provision, and you find that resources are being exempted improperly, please let us know.
- Q.** Shouldn't we be doing things systematically, not doing them over and over? We waste a lot of time going back out to resurvey every time the project design changes. How do we know what's been looked at if we don't keep records of the addresses?
- A. Glenn:** You have an APE map showing what was evaluated, so you know everything else was exempted. How much effort is it to go back out there and say, "OK, everything out here is still exempt"?

Jill: I suggest also that you keep track of the estimated time that you spend going back out and doing all these re-surveys, and let us know. If there's a significant time loss compared to the estimated timesavings of having this provision in the PA, it would be good to know that.

Germaine: The new PES form *requires* more project details, so we're hoping that by forcing the local agencies to provide this information upfront there will be fewer design changes happening.

Greg: Gary was very firm about this issue of not requiring more documentation than called for in the PA (e.g., photographs of buildings). If you run into problems, talk to your Environmental Coordinator, and he/she will bring it up with Gary.

- Q.** For HPSRs with negative findings, no cultural resources present, the HPSRs that don't go to SHPO, do I send them on to FHWA for their files or not? The PA says I don't need to, but the PA Training and Reference Manual (Tab 18) says one copy goes to FHWA. What do I do?
- A. Glenn:** If you have a report with no properties, for 106 purposes you're done. But FHWA still may want the report as technical study for NEPA compliance. So, for now do send a copy to FHWA unless they say they don't want one. It is for their files only, not for review and comment.
- Q.** What is HQ looking for in doing the PA consistency reviews?
- A. Dorene:** The memo from Greg dated February 4, 2004 had a checklist of the specific items we're looking at. If you didn't get the memo, please let me know and I will send it to you. We will also send it out with the notes to this meeting and post it to the Cultural webpage on the Intranet.
- Q.** I'm confused about the review procedures. Some people are sending their reports to HQ concurrently with submittal to SHPO/FHWA. I thought we were supposed to send them to CCSO for consistency review first. What is the policy?
- A. Dorene:** Sent them to CCSO first, as was also noted in the February 4 memo. This is so we can make sure it's all ready to go and help it go through at SHPO.
- Q.** Will CCSO forward documents submitted for PA consistency review to SHPO if a cover letter to the SHPO were provided (assuming the documents passed the consistency review)?
- A. Dana:** We will if requested, but not on a routine basis. If it's critical to project delivery, we're happy to assist.
- Q.** How can I make sure a consultant meets the qualifications in the appropriate discipline, as stated in Attachment 1? Will Headquarters be certifying consultants?
- A. Glenn:** Just as a reminder, we don't certify consultants as PQS. Attachment 1 says they must meet the Secretary of the Interior's Professional Qualifications Standards. HQ will help evaluate the qualification of consultants if requested, but district PQS can do this too. If you don't know the consultant, you can ask them to provide their qualifications or more information. The problem has been that the locals hire people before we know that they aren't qualified. The Local Assistance manual now says they have to meet the Secretary's standards. The new LA process also emphasizes early involvement of PQS.
- Q.** What about coordination with the local agency – early coordination meetings?
- A. Germaine:** We've stressed to the DLAEs that it's in their best interest to have these meetings as a time and money savings. We may need to change Chapter 6 to make it *mandatory* that the DLAEs schedule early coordination meetings, though.

- Q.** I have identified two historic era refuse scatters in the APE, both of which appear to meet the criteria of an exempt resource under Attachment 4 of the PA. My understanding is that if there is anything identified in the APE (regardless of significance), the ASR will be positive. I would prepare a positive ASR, and the two refuse scatters would be briefly described in the "Study Findings" section with primary records attached. This seems appropriate, since the ASR is an inventory-only document, and any discussion of significance would not come into play here. Also, I would expect that the ASR would be fairly minimal (i.e., commensurate with the nature of the identified resources). Then, I would prepare a Negative HPSR, in which I'd state that two resources were exempt from evaluation in accordance with Attachment 4 of the PA, with no further description. Is my understanding correct?
- A. Glenn:** They are not historic properties if they are exempt. You don't have any resources. We want to be careful not to pollute the clearinghouses with stuff that doesn't need to be documented with a P-form - and most exempt properties do not need a P-form. Yes, exempt resources are part of the inventory. You *can* mention exempt resources in the ASR, but you don't *have* to. Would it be a "minimal" ASR? Absolutely. The HPSR would say that there are no properties. You wouldn't number them or list them, but would just state that all properties met the qualifications of Attachment 4. There's a checkbox on the HPSR form to document exempt properties.
- Q.** I've heard that there is no longer a positive or negative ASR -- just an "ASR". Is that true? I personally like to indicate positive or negative in my ASR titles, as I find this very helpful, particularly if I'm doing research and the documents I come across indicate "positive" or "negative" in the report title. I hope I can continue to make this distinction in my report titles.
- A. Glenn:** This is true; there will no longer be a "positive" or "negative" distinction. This issue came up at the January teleconference, so refer to those notes for a lengthier discussion. Basically, the reason we're dropping those terms is because it's too easy to misjudge a report by its "negative" title. It's a good idea to include a clear statement in the abstract or management summary section that explains your finding.
- Q.** I sent a document to FHWA for processing prior to the PA, and they returned it, telling me to send it in under the PA. Do I need to rewrite the whole thing?
- A. Jill:** Probably not, no. It would just need to include the appropriate PQS review and approval. We've been suggesting in the consistency reviews that you note in the transmittal memo to SHPO the documentation was prepared prior to the PA, which explains the use of pre-PA terminology or procedures in your document. But I don't think any of the documents we've reviewed so far have required any rewriting in order to be consistent with the PA.
- Q.** I understand that there is to be no "grandfathering" of projects under the PA if they have ongoing consultation initiated prior to the PA. I have a project where consultation with SHPO began under FHWA, but only involved discussing various alternatives and how they each would affect a historic property. Two of the alternatives have since been dropped and the remaining one does not have any potential to affect the property. Would this be considered ongoing consultation?

- A. **Dana:** If there's been no closure to the consultation, it is considered ongoing. It is essentially FHWA's decision as to whether it is a new undertaking, so you'd need to consult them and ask the question.

Jill: An option in this case might be for FHWA to tell SHPO in writing that they wish to close out or withdraw any consultation for the project. Then submit it under the PA as a new undertaking.

- Q. What is the status of the Environmental Handbook Vol 2 (Cultural Resources)? Will it be available for consultants as well as Caltrans staff?

- A. **Dorene:** We expect to have chapters 1, 2, and 4 and their exhibits posted to the Internet within the next month. Other chapters and exhibits will follow as soon as they are approved. It will still be considered a draft, but we can start using it. And yes, it is for both Caltrans staff and consultants. We no longer have separate guidance.

Wrap-up

Greg asked for opinions about making the PQS list/certification level available on the Intranet along with staff contact information. It would be for our internal use only.

It was generally agreed that some staff would have a problem with this, so we won't pursue it.

Glenn noted that he is chairing a panel on the PA at the SCA meeting, along with some other Caltrans PQS. The goal is to introduce the PA to consultants who might be attending the SCA and perhaps help smooth the way.

Greg thanked everyone for participating and said that we would hold at least one more of these teleconferences in about four weeks.

HQ Action Items:

1. Meet with FHWA about confirmation of Section 106 compliance for NEPA.
2. Provide districts with chart for estimating timesavings per Attachment 4.
3. Post February 4, 2004 PA consistency review memo to Cultural webpage. (*done 3/3/04*)